

A man in a dark suit and tie is shown from the side, pointing his right hand towards a residential development in a rural area. The development consists of several small, single-story houses with orange walls and red roofs, situated on a dirt road. In the background, there are green hills and a clear sky. The overall scene suggests a focus on rural development and land use planning.

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Spatial Planning and Land Use Management Bill

Last year, the Constitutional Court declared the Development Facilitation Act unconstitutional and gave the government until June 2012 to rectify the problems it had identified.

On 6 May this year, the Department of Rural Development and Land Reform published a Spatial Planning and Land Use Management Bill for public comment, with a deadline of 6 June. What follows is a basic outline of the Bill.

Municipal planning and provincial planning

The Bill contains definitions of municipal planning and provincial planning. The definition of municipal planning refers to integrated development planning, the spatial development framework (SDF), and the control and regulation of land use if the nature, scale and intensity of the land use does not affect the provincial planning mandate of the provincial government or the national interest. Provincial planning is defined with reference to the provincial SDF, integrated planning by the province, and provincial policies and laws.

Development principles

The Bill contains a list of development principles that guide land use planning and development management.

These principles refer to spatial justice, sustainability, efficiency and spatial resilience. Importantly, the Bill provides that the exercise of planning authority may not be impeded or restricted on the ground that the value of land or property is affected by the outcome of the application. This provision may bolster municipalities in their search for avenues to establish mixed housing projects.

On the other hand, it may face opposition from property owners.

Intergovernmental relations

The Bill provides that the Minister of Rural Development and Land Reform must monitor and support provinces and municipalities in implementing this law, and must consult with other sector ministries.

The consequence of this provision is that the Minister of Rural Development and Land Reform will become the guardian of land use planning and development management throughout the country, including urban areas.

Provincial legislation

The Bill envisages that provincial legislation will be enacted, and contains an elaborate list of matters that should be included in such legislation. For example, it states that a premier may take steps to resolve disputes in connection with land use schemes.

Spatial development frameworks

The Bill requires national and provincial governments to adopt SDFs. This means that if the Bill becomes law, the municipal SDFs will no longer be the only spatial plans regulated in post-1994 legislation.

The Bill sets out a range of minimum standards that national and provincial governments must comply with when compiling their spatial plans. Accessibility, citizen participation, the inclusion of disadvantaged communities and predictability are some of the Bill's themes with respect to national and provincial spatial plans. In addition, the plans of the various spheres must be coordinated, aligned and harmonised.

The Bill reiterates the principle that municipal SDFs must contribute to the policies and plans emanating from other spheres of government. It lays down basic procedural provisions regarding municipal SDFs and lists minimum standards for the content that will then apply in addition to the existing requirements in terms of the Municipal Systems Act. The Bill instructs municipalities to include in their SDFs

- a five-year spatial development plan;
- a longer-term spatial development vision;
- current and future structuring elements of the spatial form of the municipality (corridors, nodes etc);
- population growth estimates;
- housing demand estimates;
- estimates of economic activity and employment trends; and
- engineering infrastructure requirements for existing and future development needs.

Planning decisions must be consistent with a municipal SDF, unless 'site specific circumstances justify a departure' from the SDF, or the application of the SDF leads to 'illogical or unintended' results. If a municipal SDF is inconsistent with the provincial SDF, the MEC must take the necessary steps to ensure the revision of the frameworks.

Land use schemes

Municipalities must adopt single land use schemes within five years of the commencement of the Act. Again, the Bill lists

minimum standards and principles, such as provision for the incremental introduction of land use management and regulation in informal settlements, compatibility with environmental legislation and the inclusion of provisions to promote affordable housing.

Land development management

The Bill envisages the submission of all land development applications to a municipality as the authority of first instance. Each municipality must establish a municipal planning tribunal consisting of officials of the municipality and outsiders with relevant knowledge and experience. Councillors may not be members of the tribunal. The Bill sets out basic procedures for the tribunal, stipulates a term of office for its members and equips it with investigating authority. If a municipality fails to appoint members to its tribunal, the premier will appoint persons on its behalf.

The Bill provides that the decision of a tribunal is final, subject to an appeal to, and judicial review by, the High Court.

Appeal

The Bill also establishes provincial planning tribunals, to which anyone aggrieved by a decision of a municipal planning tribunal can appeal, as long as the matter relates to

- national security;
- economic unity;
- the protection of the common market;
- the promotion of economic activities across provincial boundaries;
- the promotion of equal opportunity or equal access to government services; or
- the protection of the environment.

Provincial planning tribunals will also hear matters where a municipal planning tribunal has failed to take a decision within a specified period.

Furthermore, the MEC may make a determination that a particular matter must be decided by the provincial planning tribunal if it affects the provincial interest.

National interest

A land development application must be referred to the national minister if it impacts on matters within the functional area of the national sphere or on national policy objectives, or if it proposes land use for a purpose that falls within the functional areas of national government. Furthermore, if the outcome of an application may prejudice the economic, health or security interests

of one or more provinces, or if it may impede the effective performance of functions by one or more municipalities, the matter must also be referred to the national government.

Provision of services

The Bill sets out a framework for the provision of services arising from any development application. It establishes the principle that the provision of services must be determined through an agreement between an applicant and the municipality. The applicant is held responsible for the provision of internal engineering services, and the municipality is responsible for external engineering services. The Bill defines both terms in clause 1. It also regulates the payment of development charges and provision for parks, open spaces and so on.

The Bill provides that the procurement rules of the Municipal Finance Management Act do not apply when an applicant installs external engineering services instead of paying development charges.



Prof Jaap de Visser
Editor

Conclusion

This Bill is set to become one of the most important laws affecting local government. This article only sketches its broad outline, so municipalities are advised to study it carefully and engage with the public participation processes that are still to follow once the Bill is tabled in Parliament.

It is clear that the Bill raises a number of questions, many of which relate to the constitutionality of some of its provisions. Is it constitutional to require municipalities to establish a planning tribunal from which councillors are banned and to which outsiders are invited? Is the division of authority to deal with land use applications set out clearly and in a manner that is predictable? How will this legislation affect those provinces that have existing land use planning frameworks and laws? These and many more questions will undoubtedly be raised in the debates surrounding this Bill

The Bill can be accessed at http://www.ruraldevelopment.gov.za/DLA-Internet/content/document_library/documents/Bills/SpatialPlanning-LandUse2011.pdf.